

California Board of Occupational Therapy's
2011 Telemedicine Legislative Proposal

BPC 2290.5. Telemedicine informed consent

(a)(1) For the purposes of this section, "telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient constitutes "telemedicine" for purposes of this section.

(2) For purposes of this section, "interactive" means an audio, video, or data communication involving a real time (synchronous) or near real time (asynchronous) two-way transfer of medical data and information.

(b) For the purposes of this section, "health care practitioner" has the same meaning as "licentiate" as defined in paragraph (2) of subdivision (a) of Section 805 and also includes a person licensed as an occupational therapist or occupational therapy assistant pursuant to Chapter 5.6 (commencing with Section 2570) or a person licensed as an optometrist pursuant to Chapter 7 (commencing with Section 3000).

(c) Prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient or the patient's legal representative. The informed consent procedure shall ensure that at least all of the following information is given to the patient or the patient's legal representative verbally and in writing:

(1) The patient or the patient's legal representative retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the patient or the patient's legal representative would otherwise be entitled.

(2) A description of the potential risks, consequences, and benefits of telemedicine.

(3) All existing confidentiality protections apply.

(4) All existing laws regarding patient access to medical information and copies of medical records apply.

(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

(d) A patient or the patient's legal representative shall sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient or the patient's legal representative understands the written information provided pursuant to subdivision (a), and that this information has been discussed with the health care practitioner, or his or her designee.

(e) The written consent statement signed by the patient or the patient's legal representative shall become part of the patient's medical record.

(f) The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(g) All existing laws regarding surrogate decisionmaking shall apply. For purposes of this section, "surrogate decisionmaking" means any decision made in the practice of medicine by a parent or legal representative for a minor or an incapacitated or incompetent individual.

(h) Except as provided in paragraph (3) of subdivision (c), this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.

(i) This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available in a timely manner.

(j) This section shall not apply to a patient under the jurisdiction of the Department of Corrections or any other correctional facility.

(k) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

2572 Standards of Practice for Telemedicine in Occupational Therapy

(a) The provision of telemedicine is intended to provide equitable access or increased access to occupational therapy services, to promote independence, and to increase the quality and standards of care when a patient or client has a disability, illness, injury or has a need for consultative, preventative, diagnostic, or therapeutic services.

(b) The purpose of this section is to establish standards for the practice of telemedicine by means of an interactive telecommunication system by an occupational therapist or occupational therapy assistant licensed under this chapter. The standard of care provided to patients is the same whether the patient is seen in-person, via telemedicine, telehealth, or telerehabilitation, or other methods of electronically enabled occupational therapy, health care or education. Occupational therapists or occupational therapy assistants need not reside in California, as long as they have a valid, current and unrestricted California license.

(c) Occupational therapists must obtain verbal and written informed consent from the patient prior to delivering health care via telemedicine, and also requires that this signed written consent statement becomes part of the patient's medical record.

(d) An occupational therapist or occupational therapy assistant licensed under this chapter conducting telemedicine by means of an interactive telecommunication system must do all of the following:

(1) provide services and/or treatment consistent with the practice of occupational therapy as defined in section 2570.2(k) of the Code.

(2) interact with the patient maintaining the same ethical standards of practice required pursuant to Section 4170, California Code of Regulations;

(3) comply with the supervision requirements for any licensed occupational therapy assistant providing services under this section;

(4) provide and ensure appropriate client confidentiality and HIPAA compliance, establish secure connections, activate firewalls, and encrypt confidential information.

(e) Occupational therapy services shall be reimbursed, including services provided via telemedicine, pursuant to section 10123.147 of the Insurance Code.

(f) For purposes of this section:

(1) "Telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications as defined in Section 2290.5.

(2) "Telerehabilitation" means the provision, at a distance, of telemedicine-based rehabilitation services using various technologies including real-time videoconferencing, personal computer-based camera usage, videophones, home-applied technology for recording and submission of images, and includes the use of other technologies, including virtual reality videogame-based rehabilitation systems or other virtual reality systems with haptic interfaces.

(3) "Telehealth" means the provision of health care, health information, or health education, using telecommunications technology, other technologies used when providing telerehabilitation, or via other specially adapted equipment.